

ENVIRONMENTAL QUALITY

CHAPTER 8

AIR QUALITY

Sub-Chapter 6

Open Burning

- Rule 17.8.601 Definitions
- 17.8.602 Incorporation by Reference
- Rule 17.8.603 reserved
- 17.8.604 Materials Prohibited from Open Burning
- 17.8.605 Special Burning Periods
- 17.8.606 Minor Open Burning Source Requirements
- Rules 17.8.607 through 17.8.609 reserved
- 17.8.610 Major Open Burning Source Restrictions
- 17.8.611 Emergency Open Burning Permits
- 17.8.612 Conditional Air Quality Open Burning Permits
- 17.8.613 Christmas Tree Waste Open Burning Permits
- 17.8.614 Commercial Film Production Open Burning Permits
- 17.8.615 Firefighter Training

Sub-Chapter 6

Open Burning

17.8.601 DEFINITIONS (1) "Best available control technology" (BACT) means those techniques and methods of controlling emission of pollutants from an existing or proposed open burning source which limit those emissions to the maximum degree which the department determines, on a case-by-case basis, is achievable for that source, taking into account impacts on energy use, the environment, and the economy, and any other costs, including cost to the source.

(a) Such techniques and methods may include the following:

(i) scheduling of burning during periods and seasons of good ventilation;

(ii) applying dispersion forecasts;

(iii) utilizing predictive modeling results performed by and available from the department to minimize smoke impacts;

(iv) limiting the amount of burning to be performed during any one time;

(v) using ignition and burning techniques which minimize smoke production;

(vi) selecting fuel preparation methods that will minimize dirt and moisture content;

(vii) promoting fuel configurations which create an adequate air to fuel ratio;

(viii) prioritizing burns as to air quality impact and assigning control techniques accordingly;

(ix) promoting alternative treatments and uses of materials to be burned; and

(x) selecting sites that will minimize smoke impacts.

(b) For essential agricultural open burning, prescribed wildland open burning, conditional air quality open burning, commercial film production open burning, Christmas tree waste open burning, or any other minor open burning during September, October, or November, BACT includes burning only during the time periods specified by the department, which may be determined by calling the department at (800) 225-6779.

(c) For essential agricultural open burning, prescribed wildland open burning, conditional air quality open burning, commercial film production open burning, Christmas tree waste open burning, or any other minor open burning during December, January, or February, BACT includes burning only during the time periods specified by the department, which may be determined by calling the department at (800) 225-6779.

(2) "Christmas tree waste" means wood waste from commercially grown Christmas trees left in the field where the trees were grown, after harvesting and on-site processing.

(3) "Eastern Montana open burning zone" means the following counties or portions of counties: Big Horn, Blaine, Carbon, Carter, Cascade, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Glacier, Golden Valley, Hill, Judith Basin, Liberty, McCone, Meagher, Musselshell, Park (that portion north of Interstate 90), Petroleum, Phillips, Pondera, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux and Yellowstone.

(4) "Essential agricultural open burning" means any open burning conducted on a farm or ranch to:

(a) eliminate excess vegetative matter from an irrigation ditch when no reasonable alternative method of disposal is available;

(b) eliminate excess vegetative matter from cultivated fields after harvest has been completed when no reasonable alternative method of disposal is available;

(c) improve range conditions when no reasonable alternative method is available; or

(d) improve wildlife habitat when no reasonable alternative method is available.

(5) "Major open burning source" means any person, agency, institution, business, or industry conducting any open burning that, on a statewide basis, will emit more than 500 tons per calendar year of carbon monoxide or 50 tons per calendar year of any other pollutant regulated under this chapter, except hydrocarbons.

(6) "Minor open burning source" means any person, agency, institution, business, or industry conducting any open burning that is not a major open burning source.

(7) "Open burning" means combustion of any material directly in the open air without a receptacle, or in a receptacle other than a furnace, multiple chambered incinerator, or wood waste burner, with the exception of detonation of unexploded ordnance, small recreational fires, construction site heating devices used to warm workers, or safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants or elemental phosphorus plants.

(8) "Prescribed wildland open burning" means any planned open burning, either deliberately or naturally ignited, that is conducted on forest land or relatively undeveloped rangeland to:

- (a) improve wildlife habitat;
 - (b) improve range conditions;
 - (c) promote forest regeneration;
 - (d) reduce fire hazards resulting from forestry practices, including reduction of log deck debris when the log deck is close to a timber harvest site;
 - (e) control forest pests and diseases; or
 - (f) promote any other accepted silvicultural practices.
- (9) "Salvage operation" means any operation conducted in whole or in part to salvage or reclaim any product or material, except the silvicultural practice commonly referred to as a salvage cut.
- (10) "Trade wastes" means solid, liquid, or gaseous material resulting from construction or operation of any business, trade, industry, or demolition project. Wood product industry wastes such as sawdust, bark, peelings, chips, shavings, and cull wood are considered trade wastes. Trade wastes do not include wastes generally disposed of by essential agricultural open burning, prescribed wildland open burning, or Christmas tree waste, as defined in this rule.
- (11) "Wood waste burner" means a device commonly called a tepee burner, silo, truncated cone, wigwam burner, or other similar burner commonly used by the wood products industry to dispose of wood. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1982 MAR p. 688, Eff. 4/16/82; AMD, 1994 MAR p. 2528, Eff. 9/9/94; AMD, 1995 MAR p. 2412, Eff. 11/10/95; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1999 MAR p. 1660, Eff. 7/23/99; AMD, 2002 MAR p. 3586, Eff. 12/27/02.)

17.8.602 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference ARM Title 17, chapter 53, subchapter 5, identifying and defining hazardous wastes.

(2) A copy of ARM Title 17, chapter 53, subchapter 5, is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

(3) Copies of federal materials also may be obtained from:

(a) National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; email: orders@ntis.gov; web: <http://www.ntis.gov>;

(b) National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone: (800) 490-9198 or (513) 489-8190; fax: (513) 489-8695; email: ncepiml@one.net; web: <http://www.epa.gov/ncepihom>;

(c) U.S. Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250-7954; phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; email: orders@gpo.gov; web: <http://www.gpoaccess.gov>; and

(d) the libraries of each of the 10 EPA regional offices.

(4) Copies of the CFR may be obtained from the U.S. government printing office, as described in (3)(c). (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1996 MAR p. 1844, Eff. 7/4/96; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1997 MAR p. 1581, Eff. 9/9/97; AMD, 2001 MAR p. 1468, Eff. 8/10/01; AMD, 2005 MAR p. 959, Eff. 6/17/05.)

Rule 17.8.603 reserved

17.8.604 MATERIALS PROHIBITED FROM OPEN BURNING (1) The following material may not be disposed of by open burning:

(a) any waste which is moved from the premises where it was generated, except as provided in ARM 17.8.611 or 17.8.612(4)(a) or (4)(b), or unless approval is granted by the department on a case-by-case basis;

(b) food wastes;

(c) styrofoam and other plastics;

(d) wastes generating noxious odors;

(e) wood and wood byproducts that have been coated, painted, stained, treated, or contaminated by a foreign material, unless open burning is allowed under ARM 17.8.614 or 17.8.615;

(f) poultry litter;

(g) animal droppings;

(h) dead animals or dead animal parts;

(i) tires, except as provided in ARM 17.8.615;

(j) rubber materials;

(k) asphalt shingles, except as provided in ARM 17.8.614 or 17.8.615;

(l) tar paper, except as provided in ARM 17.8.614 or 17.8.615;

(m) automobile or aircraft bodies and interiors, except as provided in ARM 17.8.614 or 17.8.615;

(n) insulated wire, except as provided in ARM 17.8.614 or 17.8.615;

(o) oil or petroleum products, except as provided in ARM 17.8.614 or 17.8.615;

(p) treated lumber and timbers;

(q) pathogenic wastes;

(r) hazardous wastes, as defined by 40 CFR Part 261, incorporated by reference in ARM 17.8.602;

(s) trade wastes, except as provided in ARM 17.8.611 or 17.8.612;

(t) any materials resulting from a salvage operation;

(u) chemicals, except as provided in ARM 17.8.614 or 17.8.615;

(v) Christmas tree waste as defined in ARM 17.8.601, except as provided in ARM 17.8.613;

(w) asbestos or asbestos-containing materials;

(x) standing or demolished structures containing prohibited material, except as provided in ARM 17.8.612, 17.8.614, or 17.8.615; and

(y) paint, except as provided in ARM 17.8.614 or 17.8.615.

(2) Except as provided in ARM 17.8.606, no person may open burn any non-prohibited material without first obtaining an air quality open burning permit from the department. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-211, MCA; NEW, 1982 MAR p. 689, Eff. 4/16/82; AMD, 1991 MAR p. 126, Eff. 2/1/91;

AMD, 1994 MAR p. 2528, Eff. 9/9/94; AMD, 1995 MAR p. 535, Eff. 4/14/95; AMD, 1996 MAR p. 1844, Eff. 7/4/96; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3586, Eff. 12/27/02.)

17.8.605 SPECIAL BURNING PERIODS (1) The following categories of open burning may be conducted during the entire year:

- (a) prescribed wildland open burning;
- (b) open burning to train firefighters under ARM 17.8.615;
- (c) open burning authorized under the emergency open burning permit provisions in ARM 17.8.611;
- (d) essential agricultural open burning;
- (e) conditional air quality open burning;
- (f) commercial film production open burning;
- (g) Christmas tree waste open burning; and
- (h) any minor open burning that is not prohibited by ARM 17.8.604 or that is allowed by ARM 17.8.606.

(2) Open burning other than those categories listed in (1) of this rule may be conducted only during the months of March through November. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1982 MAR p. 691, Eff. 4/16/82; AMD, 1994 MAR p. 2528, Eff. 9/9/94; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3586, Eff. 12/27/02.)

17.8.606 MINOR OPEN BURNING SOURCE REQUIREMENTS

(1) Unless required to obtain an open burning permit under another provision of this subchapter, a minor open burning source need not obtain an air quality open burning permit.

(2) A minor open burning source must:

- (a) conform with BACT;
- (b) comply with all rules in this subchapter, except ARM 17.8.610; and
- (c) comply with any requirements or regulations relating to open burning established by any agency of local government, including local air pollution agencies established under 75-2-301, MCA, of the Montana Clean Air Act, or any other municipal or county agency responsible for protecting public health and welfare.

(3) During September, October, or November, to conduct any minor open burning not prohibited by ARM 17.8.604, a minor open burning source must adhere to the burning restrictions established by the department that are available by calling the department at (800) 225-6779.

(4) During December, January, or February, to conduct any minor open burning that is not prohibited by ARM 17.8.604, a minor open burning source must comply with the following conditions:

(a) Outside the eastern Montana open burning zone, a minor open burning source must:

(i) submit a written request to the department, demonstrating that the essential agricultural open burning or prescribed wildland open burning, or any minor open burning that is not prohibited by ARM 17.8.604 must be conducted prior to reopening of open burning in March;

(ii) receive permission for each specific burn from the department; and

(iii) adhere to the time periods set for burning by the department that are available by calling the department at (800) 225-6779.

(b) Inside the eastern Montana open burning zone, a minor open burning source need only notify the department by telephone of any essential agricultural open burning, prescribed wildland open burning, or any other minor open burning that is not prohibited by ARM 17.8.604 prior to ignition. Burning is allowed when ventilation conditions are good or excellent. Ventilation conditions are determined by the department using a ventilation index, which is defined as the product of the mixing depth in feet at the time of the daily maximum temperature, times the average transport wind in knots through the mixed layer divided by 100. Good or excellent ventilation conditions exist when the ventilation index is 400 or higher. Forecasts of ventilation conditions may be obtained by calling the department at (800) 225-6779.

(5) During March through August, subject to (2) of this rule, a minor open burning source may conduct open burning not prohibited under ARM 17.8.604.

(6) The requirements of this rule are in addition to any other applicable state, federal or local open burning requirements. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1982 MAR p. 690, Eff. 4/16/82; AMD, 1994 MAR p. 2528, Eff. 9/9/94; AMD, 1995 MAR p. 2412, Eff. 11/10/95; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1999 MAR p. 1660, Eff. 7/23/99; AMD, 2002 MAR p. 3586, Eff. 12/27/02.)

Rules 17.8.607 through 17.8.609 reserved

17.8.610 MAJOR OPEN BURNING SOURCE RESTRICTIONS

(1) Prior to open burning, a major open burning source must submit an application to the department for an air quality major open burning permit. The application must be accompanied by the appropriate air quality permit application fee required under ARM 17.8.514 and must contain the following information:

(a) a legal description of each planned site of open burning or a detailed map showing the location of each planned site of open burning;

(b) the elevation of each planned site of open burning;

(c) the method of burning to be used at each planned site of open burning; and

(d) the average fuel loading or total fuel loading at each site to be burned.

(2) Proof of publication of public notice, consistent with this rule, must be submitted to the department before an application will be considered complete. An applicant for an air quality major open burning permit shall notify the public of the application for permit by legal publication, at least once, in a newspaper of general circulation in each airshed (as defined by the department) affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than 10 days after submittal of an application. The form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(3) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(4) A major open burning source must:

(a) conform with BACT; and

(b) comply with the conditions in any air quality open burning permit issued to it by the department, which will be in

effect for one year from its date of issuance or another time frame as specified in the permit by the department.

(5) To open burn in a manner other than that described in the application for an air quality open burning permit, the source must submit to the department, in writing or by telephone, a request for a change in the permit, including the information required by (1) of this rule, and must receive approval from the department. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-211, MCA; NEW, 1982 MAR p. 690, Eff. 4/16/82; AMD, 1992 MAR p. 2061, Eff. 9/11/92; AMD, 1994 MAR p. 2528, Eff. 9/9/94; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1999 MAR p. 1660, Eff. 7/23/99; AMD, 2002 MAR p. 3586, Eff. 12/27/02.)

17.8.611 EMERGENCY OPEN BURNING PERMITS (1) The department may issue an emergency air quality open burning permit to allow burning of a substance not otherwise approved for burning under this subchapter if the applicant demonstrates that the substance to be burned poses an immediate threat to public health and safety, or plant or animal life, and that no alternative method of disposal is reasonably available.

(2) Oral authorization to conduct emergency open burning may be granted by the department upon receiving the following information:

(a) facts establishing that alternative methods of disposing of the substance are not reasonably available;

(b) facts establishing that the substance to be burned poses an immediate threat to human health and safety or plant or animal life;

(c) the legal description or address of the site where the burn will occur;

(d) the amount of material to be burned;

(e) the date and time of the proposed burn;

(f) the date and time that the spill or incident giving rise to the emergency was first noticed; and

(g) a commitment to pay the appropriate air quality permit application fee required under ARM 17.8.515 within 10 working days of permit issuance.

(3) Within 10 days of receiving oral authorization to conduct emergency open burning under (2) of this rule, the applicant must submit to the department a written application for an emergency open burning permit containing the information required above under (2)(a) through (f) of this rule. The applicant shall also submit the appropriate air quality permit application fee required under ARM 17.8.515. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-211, MCA; NEW, 1982 MAR p. 692, Eff. 4/16/82; AMD, 1992 MAR p. 2285, Eff. 10/16/92; AMD, 1994 MAR p. 2528, Eff. 9/9/94; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1999 MAR p. 1660, Eff. 7/23/99.)

17.8.612 CONDITIONAL AIR QUALITY OPEN BURNING PERMITS

(1) The department may issue a conditional air quality open burning permit if the department determines that:

(a) alternative methods of disposal would result in extreme economic hardship to the applicant; and

(b) emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

(2) The department must be reasonable when determining whether alternative methods of disposal would result in extreme economic hardship to the applicant.

(3) Conditional open burning must conform with BACT.

(4) The department may issue a conditional air quality open burning permit to dispose of:

(a) solid wood and wood byproduct trade wastes by any business, trade, industry, or demolition project; or

(b) untreated wood waste at a licensed landfill site, if the department determines that:

(i) the proposed open burning will occur at an approved burn site, as designated in the solid waste management system license issued by the department pursuant to ARM Title 17, chapter 50, subchapter 5;

(ii) the material to be burned complies with ARM Title 17, chapter 50, subchapter 5; and

(iii) prior to each burn, the burn pile was inspected by the department or its designated representative and no prohibited materials listed in ARM 17.8.604 were present.

(5) A permit issued under this rule is valid for the following periods:

(a) solid wood and wood byproduct trade wastes--one year; and

(b) untreated wood waste at licensed landfill sites--one year.

(6) The department may place any reasonable requirements in a conditional air quality open burning permit that the department determines will reduce emissions of air pollutants or minimize the impact of emissions, and the recipient of a permit must adhere to those conditions. For a permit granted under (4)(a) of this rule, BACT for the year covered by the permit will be specified in the permit; however, the source may be required, prior to each burn, to receive approval from the department of the date of the proposed burn to ensure that good ventilation exists and to assign burn priorities if other sources in the area request permission to burn on the same day. Approval may be requested by calling the department at (800) 225-6779.

(7) An application for a conditional air quality open burning permit must be made on a form provided by the department, and must be accompanied by the appropriate air quality permit application fee required under ARM 17.8.515. The applicant shall provide adequate information to enable the department to determine whether the application satisfies the requirements for a conditional air quality open burning permit contained in this rule. Proof of publication of public notice, as required in (8) of this rule, must be submitted to the department before an application will be considered complete.

(8) An applicant for a conditional air quality open burning permit shall notify the public of the application by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than 10 days after submittal of an application. Form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(9) A conditional air quality open burning permit granted under (4)(a) of this rule is a temporary measure to allow time for the entity generating the trade wastes to develop alternative means of disposal.

(10) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-211, MCA; NEW, 1982 MAR p. 691, Eff. 4/16/82; AMD, 1991 MAR p. 126, Eff. 2/1/91; AMD, 1992 MAR p. 2285, Eff. 10/16/92; AMD, 1994 MAR p. 2528, Eff. 9/9/94; AMD, 1995 MAR p. 535, Eff. 4/14/95; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1999 MAR p. 1660, Eff. 7/23/99; AMD, 2002 MAR p. 3586, Eff. 12/27/02.)

17.8.613 CHRISTMAS TREE WASTE OPEN BURNING PERMITS

(1) The department may issue an air quality open burning permit for disposal of Christmas tree waste, as defined in ARM 17.8.601(2).

(2) The department may issue an air quality Christmas tree waste open burning permit if the department determines that emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

(3) Christmas tree waste open burning must conform with BACT.

(4) A permit issued under this rule is valid for 1 year, and applicants may reapply for a permit annually.

(5) The department may place any reasonable requirements in an air quality Christmas tree waste open burning permit that the department determines will reduce emissions of air pollutants or minimize the impact of emissions, and the recipient of a permit must adhere to those conditions. The following conditions, at a minimum, must be included in any air quality Christmas tree waste open burning permit:

(a) BACT for the year covered by the permit; and

(b) a provision that the source may be required, prior to each burn, to receive approval from the department of the date and time of the proposed burn to ensure that good ventilation exists and to assign burn priorities, if necessary. Approval may be requested by calling the department at (800) 225-6779.

(6) An application for an air quality Christmas tree waste open burning permit must be made on a form provided by the department. The applicant shall provide adequate information to enable the department to determine whether the application satisfies the requirements of this rule for a permit.

(7) An applicant for an air quality Christmas tree waste open burning permit shall notify the public of its application either by publishing a notice in a newspaper of general circulation or by posting at least 2 public notices, 1 on the property as described in (a)(i) below, and 1 in a conspicuous location at the county courthouse as described in (a)(ii) below.

(a) Posted public notices must comply with the following conditions:

(i) at least 1 public notice must be posted on the property where the open burning is to occur, near the closest public right-of-way to the property, in a location clearly visible from the right-of-way;

(ii) at least 1 public notice must be posted in a conspicuous location at the county courthouse in the county where the burning is to take place;

(iii) the 2 public notices must be posted no sooner than 10 days prior to submittal of the application and no later than 10 days after submittal of the application and must remain posted

in a visible condition for a minimum of 15 days; and

(iv) the 2 public notices must state the information in the application, the procedure for providing public comment to the department on the application, the date by which public comments must be submitted to the department, and the procedure for requesting a copy of the department's decision.

(b) Publication of public notices in a newspaper must:

(i) be by legal publication, at least once, in a newspaper of general circulation in the area affected by the application;

(ii) be published no sooner than 10 days prior to submittal of the application and no later than 10 days after submittal of the application; and

(iii) follow a form provided by the department, including a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(8) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-211, MCA; NEW, 1994 MAR p. 2528, Eff. 9/9/94; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1999 MAR p. 1660, Eff. 7/23/99.)

17.8.614 COMMERCIAL FILM PRODUCTION OPEN BURNING PERMITS

(1) The department may issue an air quality commercial film production open burning permit for open burning of otherwise prohibited material as part of a commercial, educational film, or video production for motion pictures or television. Use of pyrotechnic special effects materials, including bulk powder compositions and devices, smoke powder compositions and devices, matches and fuses, squibs and detonators, and fireworks specifically created for use by special effects pyrotechnicians for use in motion picture or video productions is not considered open burning.

(2) The department may issue an air quality commercial film production open burning permit under this rule if the department determines that emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

(3) A permit issued under this rule is valid for a single production.

(4) Open burning under this rule must conform with BACT.

(5) The department may place any reasonable requirements in an air quality commercial film production open burning permit issued under this rule that the department determines will reduce emissions of air pollutants or minimize the impact of emissions, and the recipient of a permit must adhere to those conditions.

(6) An application for an air quality commercial film production open burning permit must be made on a form provided by the department. The applicant shall provide adequate information to enable the department to determine whether the application satisfies the requirements of this rule for a permit. Proof of publication of public notice, as required by (7) of this rule, must be submitted to the department before an application will be considered complete.

(7) An applicant for an air quality commercial film production open burning permit shall notify the public of its application by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of the application and no later than 10 days after submittal of the application. Form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(8) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may

request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-211, MCA; NEW, 1994 MAR p. 2528, Eff. 9/9/94; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3586, Eff. 12/27/02.)

17.8.615 FIREFIGHTER TRAINING (1) The department may issue an air quality open burning permit for open burning of asphalt shingles, tar paper, or insulated wire which is part of a building or standing structure, oil or petroleum products, and automobile or aircraft bodies and interiors, for training firefighters, if:

(a) the fire will be restricted to a building or structure, a permanent training facility, or other appropriate training site, in a site other than a solid waste disposal site;

(b) the material to be burned will not be allowed to smolder after the training session has terminated, and no public nuisance will be created;

(c) all asbestos-containing material has been removed;

(d) asphalt shingles, flooring material, siding, and insulation which might contain asbestos have been removed, unless samples have been analyzed by a certified laboratory and shown to be asbestos-free;

(e) all prohibited material that can be removed safely and reasonably has been removed;

(f) the open burning accomplishes a legitimate training need;

(g) clear educational objectives have been identified for the training;

(h) burning is limited to that necessary to accomplish the educational objectives;

(i) the training operations and procedures are consistent with nationally accepted standards of good practice; and

(j) emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

(2) The department may place any reasonable requirements in an air quality firefighter training open burning permit that the department determines will reduce emissions of air pollutants or will minimize the impact of emissions, and the

recipient of a permit must adhere to those conditions.

(3) The applicant may be required, prior to each burn, to notify the department of the anticipated date and location of the proposed training exercise and the type and amount of material to be burned. The department may be notified by phone, fax or in writing.

(4) An application for an air quality firefighter training open burning permit must be made on a form provided by the department. The applicant must provide adequate information to enable the department to determine whether the application satisfies the requirements of this rule for a permit.

(5) Proof of publication of public notice, consistent with this rule, must be submitted to the department before an application will be considered complete. An applicant for an air quality firefighter training open burning permit shall notify the public of the application for a permit by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than 10 days after submittal of an application. The form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(6) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-211, MCA; NEW, 1982 MAR p. 691, Eff. 4/1/82; AMD, 1994 MAR p. 2528, Eff. 9/9/94; TRANS, from DHES, 1996 MAR p. 2285.)

